In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 269

MARION S. FELTER, on behalf of himself and others similarly situated,
Petitioners,

vs.

SOUTHERN PACIFIC COMPANY, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above cause May 12, 1958.

OPINIONS BELOW.

The opinion of Healy, J. for the Court of Appeals for the Ninth Circuit handed down May 12, 1958

(Appendix A, p. 1) is reported in .....F. 2d..... The opinion of Murphy, J. of the Federal District Court, Northern District of California, Southern Division, handed down May 24, 1957 (Appendix A, p. v) is reported in 155 F. Supp. 315.

JURISDICTION.

The judgment of the Court of Appeals was entered on May 12, 1958 (Appendix A, p. xi). The jurisdiction of this court is invoked under 28 U.S.C., Section 1254(1), and Rule 19.1(b) of the Rules of the Supreme Court.

QUESTIONS PRESENTED.

1. Whether under the Railway Labor Act, as amended, (45 U.S.C., 151 *et seq.*) a railroad carrier and a labor union may negotiate restrictions in a check-off agreement limiting the statutory right of revocation of wage assignments for union dues by individual employees who have terminated membership in the union.

2. Whether under the Railway Labor Act, as amended, (45 U.S.C., 151 *et seq.*) individual employees, who have terminated membership in the union, may be barred by the terms of a check-off agreement between a carrier and a labor organization from exercising their statutory right to revoke their wage assignments except on a form which has been "reproduced and furnished" by the union.

STATUTE INVOLVED.

The pertinent provisions of the Railway Labor Act, as amended (45 U.S.C., Section 151 *et seq.*) are printed in Appendix B hereto, p. xii.

STATEMENT.

Petitioner and others similarly situated are employed by respondent Southern Pacific Company, hereinafter referred to as "carrier" (R. 4). They were formerly members of the respondent Brotherhood of Railroad Trainmen, hereinafter referred to as "BRT" or "Union" (R. 6).

Effective August 1, 1955, the carrier and the BRT entered into a dues deduction agreement providing for deduction of BRT dues and other fees by the carrier upon written wage assignment authorizations executed by BRT members (R. 74-80). In compliance with Section 2, Eleventh, of the Railway Labor Act (45 U.S.C., Section 152, Eleventh), the wage assignments provided in part as follows (R. 78-79):

> "This authorization may be revoked by the undersigned in writing, after the expiration of one year, or upon the termination date of the aforesaid deduction agreement, or upon the termination of the rules and working conditions agreement, whichever occurs sooner."

More than a year after the expiration of their assignments, petitioner and others resigned and terminated their membership in the BRT (R. 17, 23, 36).

At the time of their resignations, these employees submitted written revocations of their wage assignments both to the carrier and to the BRT (R. 6, 20-21, 23-24). The written revocations submitted by the petitioner and others to the carrier and the BRT were identical to the form of revocation attached to the dues deduction agreement (R. 24, 67, 79-80).

Although the revocations were in writing as required by the Railway Labor Act and were in the identical form of the revocation "form" attached to the check-off agreement, the carrier and the BRT refused to honor them on the ground that the provisions of the check-off agreement required revocations to be on forms "reproduced and furnished" by the BRT (R. 24-33, 36, 62-63). No contention was advanced that the revocations actually submitted in any way failed to comply with the provisions of the Railway Labor Act or were otherwise defective in any manner (R. 24-33, 36, 63).

The carrier advised that it would continue to deduct dues and pay them over to the BRT although petitioner and others had terminated their membership in the union (R. 7-12, 36, 63, 68).

This action was brought on behalf of petitioner and others similarly situated for appropriate injunctive relief and a determination that the dues deduction agreement, as interpreted and applied by the parties thereto, is invalid and a violation of the Railway Labor Act. The material allegations of the complaint were admitted in the answers filed by the BRT and by the carrier (R. 35-37, R. 62-64). The facts not

being in dispute, petitioner and the BRT moved for summary judgment (R. 46-47, 59-61).

The District Court was apparently of the opinion that it was not enough that the employee submit a revocation of his wage assignment in writing as provided by the Railway Labor Act. It held that a revocation required "some sort of orderly procedure" and that while the requirement that a form be secured from the BRT as a condition precedent to revocation was "a bit arbitrary", it was "no burden" and was "a reasonable compliance" with the Railway Labor Act (Appendix A, p. ix).

The Court of Appeals for the Ninth Circuit affirmed the District Court judgment (without discussing the issues) on the ground that it considered the trial court's appraisal of the case to be correct (Appendix B, p. iv).

Federal jurisdiction was conceded in the courts below. The action involves an alleged infringement by the defendant carrier and the defendant union of rights guaranteed individual employees by the Railway Labor Act. No administrative remedy exists since the controversy does not involve interpretation of the agreement and the parties thereto are in accord as to its interpretation and application. The action, therefore, is within the exclusive jurisdiction of the Federal District Court. *Brotherhood of Railroad Trainmen v. Howard,* 343 U.S. 768; *Mount v. Grand International Brotherhood of Locomotive Engineers,* 6 Cir., 226 F. 2d 604; *Brotherhood of Locomotive Firemen and Enginemen v. Mitchell,* 5 Cir., 190 F. 2d 308.

REASONS FOR ALLOWANCE OF WRIT.

1. The questions involved in this case are important in the administration of the Railway Labor Act, as amended.[1]

Section 2, Eleventh (b), of the Railway Labor Act, as amended, provides that an employee may revoke his wage assignment authorization after the expiration of one year from its execution. The only requirement in the statute is that the revocation be in writing.

Section 2, Eleventh (c), prohibits agreements providing for deduction and payment of dues to a labor organization other than that in which an employee holds membership.

The Railway Labor Act does not contemplate nor provide for negotiation as to the inclusion in check-off agreements of restrictions on the statutory right of employees to revoke dues assignments. If restrictions and conditions on this right are open to negotiation between rail carriers and rail unions then new controls on the bargaining rights of individual employees have been introduced in this field. A union naturally seeks perpetuation of its status. The carrier is not always disinterested and may prefer continuance of a particular union rather than to deal with some other bargaining representative whom its employees might

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[1]The only other appellate decision involving check-off agreements under the Railway Labor Act presents other issues. *Brotherhood of Railroad Trainmen et al. v. Switchmen's Union of North America, et al.*, 9 Cir., 253 F. 2d 81, presently pending before this court on petition for writ of certiorari. October Term, 1958, Docket No. 106.

choose. In devising such restrictions, temptation is strong for both carriers and unions to place as many obstacles as possible in the path of individual employees desiring revocation of dues assignments or a change in union representation.

Manifestly, Congress did not intend that an employer, under the guise of restriction in a check-off agreement, could continue to deduct "dues" and remit them to the union after receipt of a written revocation of the wage assignment more than a year after its execution and after the employee had terminated membership in the union. Any agreement negotiated between the employer and the union which purports to authorize such a result, as it did here, is in violation of the provisions of the Act.

The carrier and the BRT argued to the lower courts that they were entitled to negotiate "reasonable" restrictions on revocation of wage assignments for union dues. In view of the explicit and mandatory provisions of the Railway Labor Act it would appear that this argument should be made to Congress and not to the courts. Nevertheless, the respondents urged that the restriction in their check-off agreement, although construed by them to require an employee who had terminated BRT membership to obtain a revocation form printed by the BRT, was an appropriate restriction and "no burden" on the employee. Respondents argued, without any support in the record, that this restriction would promote orderly bookkeeping procedures, prevent forgeries, and permit the BRT to be "assured" that the

employee's revocation was "the result of a considered decision of the employee" and that he had not been the "victim of a raid" or "unduly influenced" or "high pressured".[2]

The issues presented by the contentions are important in the administration of the Railway Labor Act. The act does not authorize restrictions on the right of revocation of wage assignments, "reasonable" or otherwise. It is a departure from realism to say that it is "no burden" to an individual employee to comply with so-called "reasonable" restrictions on his right of revocation. Any restriction upon individual freedom guaranted by law is *per se* burdensome. To refuse his written revocation of a dues assignment unless he submits it on a form "reproduced and furnished" by the union poses an immediate obstacle to him. By such provisions the employee, who either has terminated his membership in the union or desires to do so, must solicit the grace of the union to furnish him a "form" reproduced by it in order to terminate payment of "dues". He is not free to exercise this statutory right without delay and without debating the wisdom of his decision with union officials from whom he wishes to sever all connections.

In the instant case, the BRT, although it had petitioner's revocation in proper form in its possession on the date provided by law for submission of such revocations to the carrier, refused to send it to the

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[2]BRT Brief, p. 11, certified separately as part of record for use in connection with this petition for certiorari.

carrier. Instead, petitioner was advised that he would have to wait at least another month to be released from his wage assignment, and then only if he obtained and made out another identical revocation form differing only in that it was printed by the BRT. While petitioner was thus forced to cool his heels at the whim of the BRT, further deductions were made from his wages and paid to the BRT although admittedly he had terminated his membership in that organization. While this was going on he was told that the BRT "hoped" that he would "reconsider" (R. 25). Not many employees under such conditions would persevere in a struggle against a powerful union and under normal conditions the BRT would succeed in such tactics.

It is an afterthought to suggest that "orderly bookkeeping procedures" justified refusal of a written revocation in the exact form prescribed by the agreement unless it was also submitted on a form which had been printed by and obtained from the BRT. This is effectively demonstrated by the conduct of the carrier in this case. The carrier, having received petitioner's written revocation along with others (in the identical "form" provided in the dues agreement) believed that they should be honored. Accordingly, the carrier's representative promptly wrote to the Secretary-Treasurer of the BRT local to that effect, saying (R. 28-29):

> "The attached Wage Assignment Revocations are being forwarded to you * * * as you will undoubtedly wish to show the same on the list to be furnished on or before the 5th day of April,

1957, as the names of employees from whose wages no further deductions are to be made."

The carrier saw no bookkeeping problem when it wrote to the BRT and only changed its position after protest by the BRT. Admittedly prior thereto the BRT had been notified by petitioner of the termination of his membership in the union (R. 7, 36, 24-28). The union knew that it was no longer entitled to collect dues from petitioner in view of the specific prohibitions in Section 2, Eleventh (c), of the Railway Labor Act. In addition, the union had in its possession not one, but two revocation forms executed by the petitioner. One of these forms had been submitted directly to the BRT (R. 23-24; 67). The other sent by petitioner to the carrier, was forwarded by the carrier to the BRT for inclusion on the list "of employees from whose wages no further deductions (were) to be made" (R. 28-29, 67). In this situation, the fact that these revocations were not on forms printed by the BRT is obviously totally unrelated to any administrative paper work required, and neither the carrier nor the BRT so claimed of record.

The further contention that the restriction on revocations in the dues agreement was justified to prevent "forgeries" is also an afterthought without support in the record. No claim was made that any forgery was involved in petitioner's termination of BRT membership. Presumably the carrier could detect a forged signature on a revocation form as easily as it could detect a forged endorsement on a pay check. Obviously, the matter of who printed the blank revo-

cation of dues form has nothing to do with detection of a forged revocation of a wage assignment.

The complete irrationality of the restriction makes plain that its real purpose was unlawfully to discourage revocations. The intent to delay and frustrate the employee's rights can be observed by this record, and by the admissions contained on page 11 of the BRT brief in the Court of Appeals. There the BRT stated that the restriction involved in its dues deduction agreement was designed to enable the BRT to make sure that the revocation

> "is the result of a considered decision by the employee and that he has not been the victim of a raid or has been high-pressured or unduly influenced."

The Railway Labor Act plainly does not contemplate that a union, with a financial interest and a desire for perpetuation, shall determine whether the employee's revocation represents his "considered decision". Congress did not intend that only such revocations are to be effective which, to the satisfaction of the union, are deemed executed after sufficient reflection. This intent to exercise a paternalistic role or veto power over an individual employee, who had terminated his membership, was reaffirmed by respondents in argument to the lower courts. Plainly, this is not what Congress had in mind when the provisions of the law here involved were adopted after it had been reiterated in the Congressional debates that it was *"wholly and entirely within the discretion of the employee"* as to whether his union dues were

to be deducted from his wages by an employer and paid over to a labor union.[3]

Congress was concerned with the preservation of rights and freedom of individual employees, and Senator Hill explained the effect of the bill as amended to members of the Senate in part as follows:

> "But no such (check-off) agreement is to be effective with respect to any individual employee unless first authorized in writing by him to the employer * * *. It is *wholly and entirely* within the discretion of the employee, and unless the employee sits down and writes on *a piece of paper* an authorization to the employer to turn dues, fees and assessments over to the labor organization and signs his name to the authorization there is no check-off as far as the employee is concerned. * * * Then he has a right, within a year, to revoke the assignment, *if he does not like the way it works, or if he wants to put an end to the deduction.*" (Italics added.)

The legislative history reflects that Congress specifically rejected proposals which would have left the operation of the check-off system subject to negotiation and the various provisions of collective bargaining agreements reached between carriers and unions. In enacting these amendments to the Railway Labor Act, Congress carefully protected the freedom of the individual and rejected proposals to leave the provisions of check-off agreements a matter of negotiation with all the variant restrictions which ingenuity might devise.

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[3] 96 Cong. Rec. 15735-15737.

The decisions of the lower courts in this case constitute an approval of negotiation of so-called "reasonable" restrictions and limitations on employee rights of revocation of wage assignments. Congress did not see fit to authorize such negotiation. If these decisions stand, nothing prevents negotiation of other obstacles to revocation in the name of "reasonableness" and "orderly procedure".

If the company and the union are entitled to engraft limitations on the employee's right of revocation of his wage assignment, such as the "form" of the revocation, then they can specify red paper, or 16-pound weight paper, or pica type, or whatever other conditions ingenuity may devise in the name of "orderly procedure". The substantial interests of the union lie in devising a maze of restrictions to discourage individual employees from dues revocations.

Judicial approval of power to negotiate restrictions and limitations on wage assignment revocations will not go unnoticed in the field of labor-management relations in the railroad industry. In view of the stake, other means inevitably will be sought to tighten check-off agreements for the sake of perpetuation of a union's representation rights over the craft and so as to exercise a veto on the individual employee's right of revocation and free selection of other bargaining representatives.

Congress did not intend that the amendments to the Railway Labor Act should be subject to litigation in the courts over the reasonableness or unreasonable-

ness of each limitation and restriction that might be sought to be negotiated in each check-off agreement between the various railroads of the United States and the numerous unions. To permit such a result as is present in the decisions of the lower court in this case can only mean that an endless chain of litigation is in prospect, contrary to the clear purpose of Congress as expressed in the plain language of the Act.

Congress foresaw this problem when it unequivocally and unconditionally granted the right of revocation to the individual employee. The negotiation of restrictions on the statutory right of revocation of wage assignment is a clear violation of the Railway Labor Act. It is submitted that the court should have enforced the commands and guarantees of individual liberty provided by the Railway Labor Act, and that it was in error in approving negotiation between rail carriers and unions which result in the imposition of so-called "reasonable" or any restrictions on revocations in check-off agreements which are not authorized by the Act.

The question of whether carriers and unions may negotiate restrictions on the employee's right of revocation of wage assignments for dues deduction is an important one in the administration of the Railway Labor Act. If the decisions below are permitted to stand the rights of the parties in this important field of labor law will remain in confusion. It is submitted that these decisions should be reviewed to the end that the rights of hundreds of thousands of railroad

employees subject to the Railway Labor Act may be clarified and protected and so that carriers and rail labor organizations may be instructed as to their duty under the law.

CONCLUSION.

For the foregoing reasons, the petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit should be granted.

Dated, August 5, 1958.

Respectfully submitted,

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(Appendices A and B Follow.)